ENVIRONMENTAL PROTECTION COMMISSION[567]

Regulatory Analysis

Proposed Iowa Administrative Code 567 Chapter 61, "Antidegradation Policy and Implementation Procedures: Outstanding Iowa Waters"

Notice of Intended Action published in the Iowa Administrative Bulletin Vol. XXXII, No. 4, ARC 8038B, August 12, 2009

I. Introduction

Subsection 1 of Iowa Code section 17A.4A states that upon written request by the administrative rules review committee or the administrative rules coordinator, an agency shall issue a regulatory analysis of a proposed rule that complies with subsection 2, paragraph "a" of Iowa Code section 17A.4A. The elements to be included in the regulatory analysis are specifically identified as follows:

(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

(2) A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule.

(3) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

(4) A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.

(5) A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.

(6) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why those methods were rejected in favor of the proposed rule.

Each of these elements will be addressed in turn following a summary of the background of the proposed rule making. Quantifications of the data are provided to the extent practicable, including short-term and long-term consequences in accordance with subsection 3 of Iowa Code section 17A.4A.

Persons are invited to present oral or written comments at a public hearing which will be held:

November 10, 2009	1 p.m.	Wallace State Office Building Wallace Building Auditorium 502 East 9th Street Des Moines, Iowa

Detailed information regarding Iowa's water quality standards and the Department's rules, including the full version of the "Iowa Antidegradation Implementation Procedure," can be found on the Department's Web site at http://www.iowadnr.com/water/standards/index.html.

Any person may submit written suggestions or comments on the regulatory analysis through November 10, 2009. Such written material should be submitted to Adam Schnieders, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; or by E-mail to adam.schnieders@dnr.iowa.gov. Persons who have questions may contact Adam Schnieders at (515)281-7409.

II. Background

The Department has proposed to revise the state's antidegradation policy and create implementation procedures as required by 40 CFR §131.12. The proposed amendments were approved by the Environmental Protection Commission (EPC) at its October 14, 2008, meeting, and they were included in a Notice of Intended Action published on November 19, 2008, in the Iowa Administrative Bulletin as **ARC 7368B**. The Notice of Intended Action was later amended, specifically the list of "Outstanding Iowa Waters" in Appendix B of the Iowa Antidegradation Implementation Procedure, by the EPC at its July 21, 2009, meeting with the amended Notice of Intended Action published on August 12, 2009, in the Iowa Administrative Bulletin as **ARC 8038B**.

The Clean Water Act (CWA) is the cornerstone of surface water quality protection in the United States and it sets broad goals for restoring and maintaining the chemical, physical, and biological integrity of the nation's water. Water quality standards (WQS) are aimed at translating the broad goals of the CWA into water body-specific objectives. The antidegradation rule is one of three federally required regulatory elements of the WQS. The other two elements include beneficial uses and water quality criteria (narrative and numeric). All of these review elements must be administered as a whole. All surface waters of the state are subject to antidegradation provisions. The main purpose of the antidegradation policy and implementation procedures is to protect existing uses of surface waters and to specify how the Department will determine, on a case-by-case basis, whether and to what extent existing water quality may be lowered in a surface water.

The Iowa Department of Natural Resources is required by 40 CFR §131.12(a) to develop and adopt a statewide antidegradation policy and to identify procedures for implementing that policy. There has been an antidegradation policy in Iowa's WQS, but it was absent formal implementation procedures which limited the policy's usefulness. The proposed implementation procedures include identifying the antidegradation review levels (i.e., the "tiers") that apply to a surface water; determining existing water quality; assessing and determining water quality degradation; identifying and assessing less degrading or nondegrading alternatives; determining the importance of economic or social development to justify degradation of waters; and establishing intergovernmental coordination and public participation processes.

The antidegradation policy and implementation procedures are intended to provide guidance to persons who are responsible for the regulated activities that may degrade water quality in Iowa. Regulated activities include any activity that requires a CWA permit or a water quality certification pursuant to federal law.

This effort also establishes the Outstanding National Resource Waters (ONRW) and Outstanding Iowa Waters (OIW) antidegradation use categories. These categories will provide an increased level of protection where degradation is prohibited except in limited circumstances. The implementation procedures detail how the public can nominate a surface water to be afforded these levels of protection to the Department and how the Department will consider such nominations. It is important to note the Outstanding National Resource Waters category (i.e., Tier 3) must be included in any state's antidegradation policy and implementation procedures as required by 40 CFR §131.12.

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The Administrative Rules Review Committee requested a formal regulatory analysis on September 9, 2009, specific to **ARC 8038B**, to estimate the impact OIW protections would have on the growth and economies of neighboring rural communities. **ARC 8038B** proposes to revise the list of "Outstanding Iowa Waters" in Appendix B of the Iowa Antidegradation Implementation Procedure. The impact will be assessed in relationship with the revised list of OIWs identified in **ARC 8038B**.

The amendments to the list of Outstanding Iowa Waters served three main purposes:

1. Provide a scientific review of each water on the original OIW list and associated water quality data to determine if they were appropriately qualified to be considered OIWs based on the criteria listed in the draft Iowa Antidegradation Implementation Procedures document.

2. More closely evaluate the nature of NPDES regulated facilities to determine if OIW protections would cause adverse economic impact.

3. More closely evaluate the nature of the impairments applicable to several highly regarded cold water streams (e.g., French and Waterloo Creeks) to determine the impairment severity and whether or not these and other streams should be added to the list.

The amendments can be summarized as follows:

1. Only the cold water trout streams listed on the Department's Iowa Coldwater Stream Priority Rating list that scored 3 or 4 for Water Quality Rating are currently eligible for OIW. These scores represent trout streams that exhibit consistent natural reproduction of wild trout or may serve as a brood stock source of wild trout. The Commission removed streams on the current OIW list that scored a water quality rating of 1 or 2 (this action removed 11 proposed OIWs off the original list) and added streams that received a water quality rating of 3 or 4 that were not included on the initial list (this action added 16 new streams to the OIW list).

2. Three warm water streams - Lime Creek (Buchanan/Benton Co.), Bear Creek (Buchanan/Benton Co.), and Deer Creek (Worth/Mitchell Co.) - were added based on exemplary scores for biological integrity, including diverse populations of mussels some of which are threatened and endangered species.

3. Dalton Lake is removed based on a review of the data and public comments. The Iowa Great Lakes are moving forward with intent of a more detailed review of individual great lakes through the public comment process.

Below is the amended list of Outstanding Iowa Waters:

Appendix B – Outstanding Iowa Waters

STREAMS	DESCRIPTION	Length (Miles)
1) Baron Springs	Mouth (S2, T91N, R6W, Clayton Co.) to spring source (S4, T91N, R6W, Clayton Co.)	1.99
2) Bear Creek	From road crossing in SW ¼, NW ¼, S11, T86N, R10W, Benton Co. to E line, S25, T87N, R10W, Buchanan Co.	5.2
3) Bloody Run	From (W. line of Section 22, T95N, R4W, Clayton Co.) to the confluence with Unnamed Creek (NAD83) UTM Coordinates X(Easting) 645284.89 Y(Northing) 4766657.44	8.59
4) Brownfield Creek	Mouth (Clayton Co.) to spring source (S31, T91N, R3W, Clayton Co.)	.94

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STREAMS	DESCRIPTION	Length (Miles)
5) Clear Creek	Mouth (Allamakee Co.) to W. line of Section 25, T99N, R4W, Allamakee Co.	3.79
6) Deer Creek	E. line of S1, T100N, R19W, Worth Co. to road crossing in SE ¼, S35, T100N, R19W, Worth Co.	1.6
7) Dousman Creek	Mouth (S33, T96N, R3W, Allamakee Co.) to Allamakee-Clayton Co. line	3.44
8) Duck Creek	From the mouth (S14, T100N, R06W, Allamakee Co.) to the Iowa-Minnesota state line	1.98
9) Ensign Creek (aka Ensign Hollow)	Mouth (S28, T92N, R6W, Clayton Co.) to spring source (S29, T92N, R6W, Clayton Co.)	1.05
10) Unnamed Creek (aka Erickson Spring Branch)	Mouth (S23, T98N, R4W, Allamakee Co.) to W. line of S23, T98N, R4W, Allamakee Co.	.91
11) French Creek	Mouth (Allamakee Co.) to E. line of Section 23, T99N, R5W, Allamakee Co.	5.58
12) Grannis Creek	Mouth (S30, T95N, R7W, Fayette Co.) to W. line of S36, T93N, R8W, Fayette Co.	3.56
13) Jones Creek	From the mouth (S19, T98N, R04W, Allamakee Co.) to bridge crossing at Clonkitty Rd. (S14, T98N, R05W, Allamakee Co.)	5.75
14) Kleinlein Creek	Mouth (Clayton Co.) to spring source (South Spring) (S10, T91N, R6W, Clayton Co.)	3.96
15) Lime Creek	From confluence with unnamed tributary in NE ¼, NW ¼, S34, T87N, R10W, Buchanan Co. to N. line of S23, T87N, R10W, Buchanan Co.	3.0
16) Little Paint Creek	Mouth to N. line of Section 30, T97N, R3W	1.92
17) Ludlow Creek	Mouth (S2, T96N, R6W, Allamakee Co.) to confluence with an unnamed tributary (S33, T97N, R6W, Allamakee Co.)	2.00
18) Mill Creek (aka Big Mill Creek)	Confluence with Little Mill Cr. to confluence with Unnamed Cr. (S1, T86N, R3E, Jackson Co.)	8.04
19) Mossey Glen Creek	Mouth (S3, T91N, R5W, Clayton Co.) to S. line of S10, T91N, R5W, Clayton Co.	1.96
20) North Bear Creek	Mouth (S25, T100N, R7W, Winneshiek Co.) to Iowa-Minnesota state line	6.39
21) Pine Creek (aka South Pine Creek)	Mouth (S26, T99N, R7W, Winneshiek Co.) to N. line of S21, T99N, R7W, Winneshiek Co.	2.80
22) Smith Creek (aka Trout River)	Mouth (S21, T98N, R7W, Winneshiek Co.) to S. line of S33, T98N, R7W, Winneshiek Co.	3.42
23) South Canoe Creek	From the mouth (S22, T99N, R08W, Winneshiek Co.) to the bridge crossing at Winn Rd. (S21, T99N, R08W, Winneshiek Co.)	1.90
24) Spring Branch Creek	Mouth (S10, T88N, R5W, Delaware Co.) to spring source (S35, T89N, R5W, Delaware Co.)	2.83
25) Storybook Hollow	Mouth (S7, T86N, R4E, Jackson Co.) to S. line of S12, T86N, R3E, Jackson Co.	1.37
26) Trout Run	Mouth (S16, T98N, R4W, Allamakee Co.) through one mile reach	1.0
27) Twin Springs Creek	Mouth (S17, T98N, R8W, Winneshiek Co.) to springs in Twin Springs Park (S20, T98N, R8W, Winneshiek Co.)	0.61

STREAMS	DESCRIPTION	Length (Miles)
28) Unnamed Creek (aka Cold Water Cr.)	Mouth (S32, T100N, R9W, Winneshiek Co.) to N. line of Section 31, T100N, R9W, Winneshiek Co.)	2.46
29) Unnamed Creek (aka S. Fk. Big Mill)	Mouth (S8, T86N, R4E, Jackson Co.) to W. line of S17, T86N, R4E, Jackson Co.	0.97
30) Village Creek	Mouth (Allamakee Co.) to W. line of S19, T98N, R4W, Allamakee Co.	13.32
31) Waterloo Creek	Mouth (S35, T100N, R6W, Allamakee Co.) to Iowa-Minnesota state line	9.39
32) West Branch French Creek	From the mouth (S23, T99N, R05W, Allamakee Co.) to the confluence with Unnamed Creek (S26, T99N, R05W, Allamakee Co.)	.67
Total		112.39

LAKES	**Description (Section, Township, Range)**	**Size (Acres)**
1) Big Spirit Lake SGMA	S33, T100N, R36W	5,684
2) East Okoboji Lake SGMA	S29, T99N, R36W	1,835
3) Lower Gar Lake SGMA	S32, T99N, R36W	251
4) Minnewashta Lake SGMA	S29, T99N, R36W	122
5) Upper Gar Lake SGMA	S29, T99N, R36W	36
6) West Okoboji Lake SGMA	S20, T99N, R36W	3,847

III. Elements of the Analysis

A. *A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.*

Any person or facility engaging in new or expanding Clean Water Act regulated activities that would degrade water quality within the drainage area of these 32 streams and 6 lakes or any other waters later revised to OIW status through the nomination and review process described in Section 1.3 of the "Iowa Antidegradation Implementation Procedure" (AIP) will be impacted by the OIW categorization. This includes any activity that requires a permit or a water quality certification pursuant to the following federal laws: 1) CWA § 402 NPDES permits, 2) CWA § 404 dredge and fill permits, 3) any activity requiring a CWA §401 certification.

Classes of persons that will benefit from the proposed rule include all users of surface waters categorized as OIW. The proposed rules will better preserve Iowa's outstanding surface water resources for future generations.

B. *A description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons, including a description of the nature and amount of all of the different kinds of costs that would be incurred in complying with the proposed rule.*

The application of the Outstanding Iowa Waters (OIW) antidegradation category may have an economic impact in a given watershed. This category provides a very high level of water quality protection by prohibiting degradation of Outstanding Iowa Waters in all but three situations:

1) The degradation will be "temporary and limited" as defined in Section 2.4 of the Iowa Antidegradation Implementation Procedure (AIP) document;

2) The applicant documents that less degrading alternatives are not available, that effects on existing water quality will be minimal, and that the project will, overall, serve to enhance the value, quality, or use of the OIW (for example, a new or expanded source of wastewater treatment effluent associated with a visitor center may be authorized where reasonable nondegrading or less degrading treatment alternatives are not available as outlined in Section 3 of the AIP); or

3) The degradation is caused by the expansion of an existing source and the applicant has conducted an alternatives analysis, selected the least degrading alternative that is "affordable" within the meaning of Section 3.2 of the AIP, and demonstrated the socioeconomic importance of the project as described in Section 3.3 of the AIP after full opportunity for public comment. In all cases, current treatment levels for existing sources should be enhanced, where possible.

Situation #3 above represents a change, based on public input, to how the rule was originally proposed in October of 2008. The original proposal prohibited any degradation due to expansions. This change will allow expansions to occur for existing discharges, but is still protective of Iowa's outstanding resources by not allowing the cost-effective cap to be considered in the alternatives analysis. Therefore, any existing facility proposing an expansion that may degrade water quality in an OIW must select the least degrading option the facility can afford. The economic impact of this provision is limited because there is no municipal wastewater treatment plant known to discharge into the waters proposed as OIW. Facilities with an individual NPDES permit known to be potentially impacted are listed in Table 1.

Table 1 — Outstanding Iowa Waters with individual NPDES permittees

OIW Water Body	Facility Name
Spring Branch Creek	DNR Manchester Fish Hatchery
Village Creek	Makee Manor Care Facility

The facilities listed in Table 1 are not expected to be impacted by the proposed rule. The DNR Fish Hatchery in Manchester and Makee Manor Care Facility are considered static in their operations and likely will not need to expand or grow their operations. Therefore these facilities will not need to expand their wastewater treatment plant infrastructure resulting in water quality degradation and as a result will not be negatively impacted by the categorization of these streams as Outstanding Iowa Waters. Furthermore, the manner in which trout hatcheries are regulated and the quality of the water discharged should not result in water quality degradation.

It is important to note that there are several additional waters being proposed as OIWs in this rule making that do not have any existing CWA regulated activities. Any new discharger, primarily industries, could have a difficult time locating in these watersheds unless it is demonstrated that less degrading alternatives are not available, that effects on existing water quality will be minimal, and that the project will, overall, serve to enhance the value, quality, or use of the OIW. The cost of this is impossible to estimate. There is no way to determine whether new industries would want to locate in the drainage areas of the proposed OIWs and would need to discharge pollutants. There are also no new municipalities or settlements expected to emerge within these drainage areas needing centralized wastewater treatment and the corresponding permits. Historical review of CWA regulated activities show that permanent new sources of degradation of the waters proposed as OIWs have been nearly nonexistent.

A complicating factor is whether a new discharge would be directly to the OIW segment, or indirectly via a tributary that eventually reaches the OIW segment. Any new or expanded discharge will be examined on a pollutant-by-pollutant basis. Some pollutants can decay naturally and may dissipate before reaching an OIW segment. One example of this situation may be a wastewater treatment plant that discharges indirectly to an OIW stream through 20 miles of unnamed stream tributaries.

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The unnamed tributaries are not OIWs and therefore degradation can be allowed after a Tier 2 antidegradation review, but degradation is generally prohibited downstream in the OIW or ONRW segment. Pollutants such as ammonia-nitrogen, chlorine, or bacteria naturally decay or dissipate over time as they travel downstream. Each pollutant and discharge scenario can be different and will need to be closely examined to determine if degradation in the OIW may actually occur.

New discharging on-site wastewater disposal systems would be prohibited from degrading OIW waters. Nondischarging on-site wastewater disposal systems, such as a mound system, would qualify as a non-degrading option. These systems are, in general, about 33% more expensive than their discharging counterparts. The typical discharging on-site systems cost around $9,000 while nondischarging systems can cost in the range of $10,000 to $12,000 depending on local variables (e.g., cost of materials, topography). There are only two known discharging on-site systems in the proposed OIW drainage areas. It is impossible to estimate how many future on-site systems would be required to install nondischarging systems as a result of this proposal.

New quarry operations may be impacted as a result of a water body categorized as an OIW. These operations generally require dewatering of some of the pits created during the quarrying process. There are some quarry operations that do not require dewatering and therefore will not be impacted. Dewatering operations may be prohibited in OIWs if degradation were reasonably expected to occur. The AIP allows for an analysis to determine whether or not a regulated activity will result in degradation through an evaluation of the expected discharge quality versus ambient water quality conditions for the constituents that will be discharged.

In many cases, effluent from quarry dewatering is expected to be similar to groundwater and may be comparable to the quality of water found in spring fed trout streams. If the effluent quality is better than or equivalent to the ambient water quality consistent with the provisions in the AIP, then it may be possible to locate a new quarry in these watersheds. If it is shown that unacceptable degradation may result, then this activity would not be allowed to occur to protect Iowa's outstanding water resources. This may require the raw materials, like crushed limestone rock, to be quarried outside the OIW watershed and hauled in for projects. This may increase the cost of projects within these watersheds due to increased hauling costs of importing the raw material from quarries outside the watershed; however, this is not expected to be significant due to the relatively small size of the drainage areas of the proposed OIWs.

Antidegradation policies only apply to Clean Water Act (CWA) regulated concentrated animal feeding operations (CAFOs) as defined in 567 IAC Chapter 65, Division II, which does not include most confinement feeding operations because they are specifically prohibited from discharging by state law (567 IAC Chapter 65). Discharges from CWA regulated CAFOs that are considered to result in degradation are prohibited in the drainage areas of OIWs. A non-discharging CAFO would be allowed in OIW watersheds. There are no known Clean Water Act (CWA) regulated concentrated animal feeding operations (CAFOs) in the watersheds of the proposed OIWs. As a result, it is impossible to estimate how many future planned CWA regulated CAFOs would be prohibited as a result of this proposal and whether the alternatives selected would result in appreciable cost differences.

Additional waters may be added to the list of Outstanding Iowa Waters in future rule-making efforts as detailed in the AIP. The economic impact of these potential additions to the OIW list can only be determined as new waters are considered for inclusion as OIWs at that future time and place.

One of the protections afforded to Outstanding Iowa Waters is that any regulated activity that may temporarily degrade an OIW will require an individual NPDES permit or individual §401 certification to ensure that impacts will be temporary and limited and that the public can participate in the decision whether to allow degradation. As a result, this will increase the amount of time it takes to receive a permit.

There is direct cost associated with this provision as a result of the difference between NPDES permit fees for individual and general permitted activities. Storm water discharges associated with industrial activities (i.e. General Permits No. 1, 2, & 3) pay an annual general permit coverage fee of $175. If the activity occurs within the drainage area of an OIW, this activity will require an individual NPDES permit at an annual cost of $1,250. The additional cost is associated with the level of review and detail required for individual NPDES permits which provide the additional review needed to ensure that impacts resulting from these activities will be temporary and limited.

The Department currently issues five different general permits for certain classes of activities.

- General Permit #1 – Storm Water Discharge Associated with Industrial Activity
- General Permit #2 – Storm Water Discharge Associated with Construction Activities
- General Permit #3 – Storm Water Discharge Associated with Industrial Activity for Asphalt Plants, Concrete Batch Plants, and Rock Crushing Plants, and Construction Sand and Gravel Facilities
- General Permit #4 – Discharge from Private Sewage Disposal Systems
- General Permit #5 – Discharge from Mining and Processing Facilities

A review of all regulated activities receiving coverage under all general permits was conducted to assess the impact of these activities that would require an individual permit under the proposed rule. Of the general permits examined, the majority of the activities identified in drainage areas of OIWs received coverage under general permit #2 – storm water discharge associated with construction activities. These are typically one time permits that are not renewed, therefore not a recurring cost. The majority of these activities occurred in the Iowa Great Lakes watershed. There are nominal amounts of activities covered by general permits #1, 3, 4, & 5. Each watershed was examined individually to determine the permit fee cost difference under the proposed rule. The critical factor examined in this case was the rate at which these activities are estimated to occur in these drainage areas based on a historical review of how these watersheds have been regulated under the CWA. For water bodies that had limited history of CWA regulated activities and where the frequency was expected to be less than one activity per year, an annual rate of one per year was used representing a conservative approach. It is also important to note that these frequencies are subject to change depending on future development and activities that may occur in these OIW watersheds.

Table 2 — Permit Fee Cost Difference

STREAMS	Rate of CWA Regulated Activity Occurrence	Old cost based on annual expected rate	New cost based on annual expected rate
1) Baron Springs	No history of CWA regulated activities	$0	$0
2) Bear Creek	2/year	$350	$2,500
3) Bloody Run	1/year	$175	$1,250
4) Brownfield Creek	No history of CWA regulated activities	$0	$0
5) Clear Creek	<1/year	$175	$1,250
6) Deer Creek	No history of CWA regulated activities	$0	$0
7) Dousman Creek	No history of CWA regulated activities	$0	$0
8) Duck Creek	<1/year	$175	$1,250
9) Ensign Creek (aka Ensign Hollow)	No history of CWA regulated activities	$0	$0

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STREAMS	Rate of CWA Regulated Activity Occurrence	Old cost based on annual expected rate	New cost based on annual expected rate
10) Unnamed Creek (aka Erickson Spring Branch)	No history of CWA regulated activities	$0	$0
11) French Creek	<1/year	$175	$1,250
12) Grannis Creek	<1/year	$175	$1,250
13) Jones Creek	<1/year	$175	$1,250
14) Kleinlein Creek	<1/year	$175	$1,250
15) Lime Creek	<1/year	$175	$1,250
16) Little Paint Creek	<1/year	$175	$1,250
17) Ludlow Creek	No history of CWA regulated activities	$0	$0
18) Mill Creek (aka Big Mill Creek)	<1/year	$175	$1,250
19) Mossey Glen Creek	No history of CWA regulated activities	$0	$0
20) North Bear Creek	<1/year	$175	$1,250
21) Pine Creek (aka South Pine Creek)	No history of CWA regulated activities	$0	$0
22) Smith Creek (aka Trout River)	<1/year	$175	$1,250
23) South Canoe Creek	<1/year	$175	$1,250
24) Spring Branch Creek	<1/year	$175	$1,250
25) Storybook Hollow	<1/year	$175	$1,250
26) Trout Run	<1/year	$175	$1,250
27) Twin Springs Creek	<1/year	$175	$1,250
28) Unnamed Creek (aka Cold Water Cr.)	<1/year	$175	$1,250
29) Unnamed Creek (aka S. Fk. Big Mill)	<1/year	$175	$1,250
30) Village Creek	<1/year	$175	$1,250
31) Waterloo Creek	<1/year	$175	$1,250
32) West Branch French Creek	<1/year	$175	$1,250
Total		$4,200	$30,000

LAKES	Rate of CWA Regulated Activity Occurrence	Old cost based on annual expected rate	New cost based on annual expected rate
1) Big Spirit Lake	3/year	$525	$3,750
2) East Okoboji Lake	5/year	$875	$6,250
3) Lower Gar Lake	2/year	$350	$2,500
4) Minnewashta Lake	2/year	$350	$2,500
5) Upper Gar Lake	2/year	$350	$2,500
6) West Okoboji Lake	4/year	$700	$5,000
Total		$3,150	$22,500

C. *The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.*

The probable costs to the Department are associated with the review of nominations for Outstanding Iowa Waters and the additional work required by the issuance of individual permits and §401 certifications in these watersheds. It is anticipated that review of the nominations for Outstanding Iowa Waters can be incorporated into the existing work of the Water Quality Standards program.

Based on the historical review of NPDES general permitted activities, it is conservatively expected that 39 individual permits will be required annually for activities occurring in the proposed OIW watersheds. Each individual permit may take roughly 16 hours versus the 1 hour currently required for review for coverage under general permits. These are primarily expected to be storm water activities covered under general permit #2. The potential 624 hours (78 workdays) increase in workload may increase the current storm water permit staff workload by approximately 30%. It is not known at this time if this will require any additional staff. If the need for additional staff becomes clear, then it could potentially be funded by the increased fees as identified in Table 2.

Based on review of the §401 certifications process, it is conservatively expected that 100 additional certifications will be required annually for activities occurring in the proposed OIW watersheds. Each individual certification may take roughly 2 more hours to complete versus the 1 hour currently required for review of a §404 nationwide permit application. The potential 200 hours (25 workdays) increase in workload may increase the current staff workload by approximately 10%. It is not known at this time if this will require any additional staff.

D. *A comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction.*

The total costs for implementing the proposed rules are impossible to calculate due to the factors described in Part B, but would include increased costs for individual permitting vs. general permitting, additional department staff time for review of nominations for OIWs, additional department staff time to issue individual permits, and potential loss of industrial growth within OIW watersheds.

The anticipated benefits from the revised antidegradation policy and new implementation procedures are associated with the potential improvements to instream protections for aquatic and semiaquatic life, wildlife and livestock watering needs, and aesthetic conditions due to increased attention to researching treatment alternatives and preventing water quality degradation consistent with provisions listed in the AIP. The proposed implementation procedures require a systematic review of various options for treating a proposed discharge. Tier 2½ protection works to require potential dischargers to select a plan that affords a higher degree of protection than given to Tier 2 waters.

There may also be indirect marketing benefits associated with waters categorized Outstanding Iowa Waters (OIW). These benefits may be realized by increased tourism and use of these waters and other nonuse benefits such as Iowans simply knowing these resources are better protected and preserved for future generations.

The monetary benefits are also impossible to determine as none of the benefits have a readily identifiable monetary value. Due to the fact neither costs nor benefits have readily identifiable monetary values it is impossible to compare the costs and benefits of implementing the rules with the results of inaction with any reliable degree of accuracy. This is truly a matter of perspective. For example, assume an ethanol plant is interested in locating in the drainage area of a cold water trout stream. There are economic benefits and social importance for this type of industrial growth. However, the discharge while protecting beneficial uses may degrade the existing water quality to the point that consistent natural reproduction of wild trout is no longer possible. This may result in decreased user trips from anglers to this area due to declining fish populations or perception that the water quality isn't what it used to be resulting in decreased tourism to that area. Conversely, if this water is protected via OIW, then the reverse is possible

through maintained or increased amounts of fishing trips to the area around these streams, but possible loss in potential industrial growth (depending on the variations of how strong that potential might be in these areas).

E. *A determination of whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rule.*

The overall purpose of the proposed rule is to preserve the quality of Iowa's exemplary surface waters for all Iowans. As discussed in Section B, the Department has actively pursued less intrusive methods for incorporation into the final rule. For example, the provision allowing an existing discharger to degrade the OIW only if the applicant has conducted an alternatives analysis, selected the least degrading alternative that is "affordable," and demonstrated the socioeconomic importance of the project after full opportunity for public comment represents a change, based on public input, to how the rule was originally proposed in October of 2008. The original proposal did not allow this flexibility for existing discharges and prohibited degradation resulting from expansions.

This change will allow expansions to occur for existing discharges, but is still protective of Iowa's outstanding surface water resources by not allowing the cost-effective cap to be considered in the alternatives analysis. Therefore, any existing facility proposing an expansion that may degrade water quality in an OIW must select the least degrading option the facility can afford regardless of whether it is cost-effective.

Also, it must be noted that regulated entities are presented the opportunity to demonstrate whether or not an activity may result in unacceptable pollution of these outstanding surface water resources by comparing the expected discharge quality versus ambient water quality conditions for the constituents that will be discharged.

F. *A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.*

The Code of Federal Regulations (40 CFR §131.12) requires that states adopt a minimum three-tier antidegradation policy. Tier 1 maintains existing and beneficial surface water uses, Tier 2 maintains existing water quality unless a review of reasonable alternatives and social and economic considerations justifies a lowering of water quality, and Tier 3 prohibits degradation. However, EPA guidance allows for a Tier between Tiers 2 and 3, commonly referred to as Tier 2½, that recognizes individual states may have waters that warrant special protection, but do not warrant a complete ban of any and all degradation.

Since Tier 2½ falls between Tier 2 and Tier 3, the level of protection is greater than Tier 2, but not as restrictive as what is required in Tier 3. Tier 2 protection is afforded to all surface waters where existing water quality is better than applicable water quality standards as determined on a pollutant-by-pollutant basis. Tier 2 protection allows degradation only if a review of reasonable alternatives and social and economic considerations justifies a permanent lowering of water quality or the lowering of water quality is temporary and limited.

Tier 3 protection prohibits any lowering of water quality unless it is temporary and limited, as determined by the Director of IDNR on a case-by-case basis. Any proposed activity that would result in a permanent new or expanded source of pollutants is prohibited. This is a very high level of protection with no flexibility available under 40 CFR §131.12.

The Department recognized that very few waters in Iowa, if any, could be considered outstanding on a national level in the context and framing flexibilities of the antidegradation policy. However, the Department also recognized that there are waters of exemplary quality when compared to other waters

across Iowa. The allowance for this intermediate Tier 2½ in EPA guidance offered the unique opportunity to provide an additional level of protection to help preserve Iowa's outstanding surface water resources while providing more implementation flexibility. Another benefit of Tier 2½ is that it allows for waters to be added or removed from the list without requiring the approval of the Environmental Protection Agency (EPA).

Throughout the rule-making effort, there have been suggestions to eliminate the Tier 2½ category altogether in favor of the federally required three-tier system. Designating Outstanding Iowa Waters as Outstanding National Resource Waters would afford more protection for these waters by prohibiting degradation and removing the implementation flexibilities afforded by Tier 2½. Since Tier 3 is federally required, any modification to the list must be approved by the EPA.

As discussed in parts B and E above, additional flexibilities will be a part of the final rule based on public input compared to how the rule was originally proposed in October of 2008. The original proposal did not allow flexibility for existing discharges within OIW watersheds and prohibited degradation resulting from expansions. The revisions will allow expansions to occur for existing discharges, but is still protective of Iowa's outstanding resources by not allowing the cost-effective cap to be considered in the alternatives analysis. Therefore, any existing facility proposing an expansion that may degrade water quality in an OIW must select the least degrading option the facility can afford. This is one example of the implementation flexibilities that are possible under Tier 2½ that are not possible under Tier 3.

From the Department's perspective, the ability to afford a level of protection that recognizes and attempts to preserve Iowa's truly remarkable surface water resources is needed and long overdue. Examination of the chemical, biological, and physical characteristics of Iowa's surface waters reveals that there are very few waters that exhibit exceptional quality. Some of those that do have exceptional quality show declining trends. The Outstanding Iowa Waters category in this rule proposal presents a unique opportunity to afford a level of protection commensurate with the caliber of waters listed in this proposal.

ARC 8247B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)*"b."*

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

The proposed amendments require measurement of a child's mental health functioning level with a standardized instrument when Medicaid remedial services are initiated and every six months thereafter. The remedial services provider would be required to submit the results of the testing as part of the request for prior authorization for continued remedial services.

Federal regulations for rehabilitation services specify that the services must demonstrate the child is making progress for the services to continue. The proposed amendments require the use of standardized measurement tools to make the evaluation of progress more uniform and to make the evaluation more effective at identifying the need for changes in strategies or interventions.

These amendments do not provide for waivers in specified situations. The clinician may choose the most appropriate standardized measurement tool, in cooperation with staff of the Iowa Plan for